



ONE STOP FINANCIAL, INC.

Business Benefits

55 MAIN ST., LITTLE FALLS, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

For June 13th
June 9, 1993

Mr. Richard Kurth
AT&T Product Manager
900 RT 202/206 North RM 2A136
Bedminster, NJ 07921

Dear Richard:

As per our conversation yesterday, (6/8/93) you will get back to me on June 22, 1993 to let me know whether AT&T will give me the contract tariff I am requesting. Furthermore it is understood that if you decide to offer us what I feel is an equitable program, then that program will be sent to me by June 28, 1993.

You have also stated that I would only be paid promotional credits on one \$400,000.00 per month "Best in the Business" obligation and three \$50,000.00 per month, "Big Switch" obligations. As you are aware I own 21 plans of 50,000 per month which you have decided that you are only paying on three of the 21 plans.

This will confirm for the record that my position is that AT&T has no authority to refuse to pay promotional credits on the 18 other plans it owns and that its continued refusal to do so is contrary to its tariff and therefore its FCC obligations.

As a compromise however, should AT&T find it feasible to offer an equal benefit in substitution for its promotional credit obligations through a contract tariff offering, you can be assured that such an offer will be given every fair consideration.

You stated, "If I gave One Stop Financial a contract tariff, then all other aggregators would want the same thing too." This excuse begs the question. My current account manager, Joe Fitzpatrick, made it very clear that the very essence of AT&T's contract tariffs is the flexibility it provides AT&T in designing unique packages of services based on a particular customer's qualifications. As you know, One Stop has a unique and enviable market position unmatched by most other aggregators. Such uniqueness fully justifies AT&T's effort to devise a contract tariff to fit One Stop's needs.

The obvious uniqueness One Stop has and which justifies a specific contract tariff is the number of accounts that One Stop can and does maintain on a plan. As you are aware we currently have 13,701 accounts, and I am now in the process of buying out another aggregator, so this will go up by about 500 more. The company that is in second place to us has only between five and six thousand accounts. Joe Fitzpatrick has confirmed that One Stop Financial has about 20% of the entire population of aggregated accounts.

If you constructed a contract tariff that gave us a strong incentive to go after non AT&T 800 business, we could be a major asset to you.

We are currently on a national hiring blitz that will increase independent contractors by nearly a thousand. I believe it would be in AT&T's best interest to have us bringing in Accounts in the future than taking business away from AT&T.

I believe we can work together in harmony, putting together a contract tariff. I know that working together would be in AT&T's best interest than for us to use the plethora of existing information I have compiled to ask the FCC and the courts to set the discount rates. If I were forced to ask the courts to set the rates I would also demand retroactive compensation.

You're very bright Rich. I know we can come up with something that we can both live with.

The contract tariff does not have to include Megacom discounts. I know AT&T especially does not want us going after their national accounts and I have no problem therefore not being offered a contract tariff that didn't include megacom service pricing.

I am willing to work with my account manager Joe Fitzpatrick and develop ways to help AT&T win 800 customers.

Sincerely,


Alfonse G. Inga
President/One Stop Financial, Inc.



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55 MAIN ST., LITTLE FALLS, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

Thomas Schreiner
SmithKline Beecham
1201 South Collegeville Road
Collegeville, PA 19426

June 9, 1993

Dear Thomas:

I am grateful that you have decided to stay with us temporarily while we negotiate a private contract with AT&T.

At this point however AT&T has informed us that they will let us know on June 22, 1993 as to whether or not they will offer us a private contract. If they will, we will know by June 28th what our rates will be.

If those rates are not enough to satisfy you I understand from my sales person Ed Simon that you will move to Sprint.

We will get back to you ASAP with information.

Sincerely,

Alfonse G. Inga
Alfonse G. Inga
President

*SAMPLE
MAJOR
ACCOUNTS
LOST !!
NO Contract Tariff*

OSF



ONE STOP FINANCIAL, INC.

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55 MAIN ST., LITTLE FALLS, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

Lisa Hockert
AT&T
901 Marquette Ave.
Minneapolis, MN 55402

June 23, 1993

Dear Lisa:

Per my agreement with Joseph Fitzpatrick and Richard Kurth I will cancel \$600,000 per year CSTPII plans for Two Stop Financial through Nineteen Stop Financial, Inc. (18 plans) Also the \$12,000 per year plan for Winback & Conserve Program is to be canceled.

I am canceling these plans because, number one AT&T has informed me that they will not pay me the promotional credits on the plans as they should be as per AT&T FCC Tariff 2.

Number two, I am canceling these plans because I have been led to believe that I will be offered a contract tariff.

Item two:

Attached is my letter which was sent to you on June 14, 1993, regarding the name that will be used on the 4.8 million dollar plan.

As you are aware the 4.8 million dollar plan under 800 discounts was canceled May 28, 1993 (Plan ID 2828).

The 4.8 million per year plan was taken out 6/4/93 with a new network services commitment form, under the name One Stop Financial.

The promotion for Best in the Business was extended if you recall past tariff guidelines due to the fact AT&T wouldn't pay me on the 21 CSTPII Big Switches.

Sincerely,

Alfonse G. Inga/President
One Stop Financial, Inc.

EACH Firm WAS \$175,000

I GAVE UP \$3,675,000
BECAUSE AT&T Promised
me they would give me
a CT where in the long run
I would be better off.

175,000
X 21

3,675,000



ONE STOP FINANCIAL, INC.

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55 MAIN ST., LITTLE FALLS, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

Richard Kurth
Joseph Fitzpatrick
Richard Higginson
AT&T
VIA FAX

June 28, 1993

RE: Our conference call of June 22, 1993

Dear Gentlemen:

Thank you for getting back to me on the agreed date of June 22, 1993 to give me answers to the questions I had raised regarding your policy on CSTP II and plan assumptions and my continued request for contract tariff.

As you are aware I sought to have my \$33 million per year CSTP II plan acquired by my \$12,000 per year CSTP II plan. The 33 million plan was a pre June 10, 1993 ordered plan and the \$12,000 plan was a post June 10 plan. You denied my request because you have stated that AT&T policy regarding this type of an assumption would be dictated by the rules governing the ACQUIRED plan.

As you are aware since the 33 million plan is both at the highest commitment level under CSTP II, and is a pre June 10, 1993 plan, I could not do the sought after assumption, because this type of transfer would be under the bump up rules, not the remaining revenue commitment rules. As you are aware I don't agree with your long awaited decision (tariff interpretation) but I thank you for at least definitively setting down what the guidelines will be.

The second question regarding contract tariff may make your unfavorable decision towards me, regarding my restructuring of my plans, moot anyway, because I would not feel the need to restructure my plans if I was given an equitable contract tariff.

You have asked me to put together another request that I would feel is equitable and I trust that your intentions are not just to keep on stalling me.

My request to have rates on the same level as AVIS Car Rental's Tariff 12 (Option 60), 8 million per year commitment, was denied by you because you claim that it is different with AVIS because they control 8 million themselves as one company.

I have two points regarding your comment. Number one, your assumption that I don't control at the very least 8 million dollars a year in revenue from all my locations is absurd. I have the influence to move at least 70% of my \$50 million per year revenue being generated to AT&T.

Number two, the FCC does not differentiate regarding the fact that my volume is made up of unaffiliated locations, since I am your customer and I am financially liable for all of my locations' bills. Instead of forcing the issue and having me demand a particular T-12, or Contract Tariff, let's work out something we can both live with.

I hope that, after our pleasant conversation, you feel that I am very willing to work with you to win back new business to AT&T and conserve existing business from leaving AT&T.

I will be sending you another proposal within the next couple of days.

Sincerely,


Alfonse G. Inga
President/One Stop Financial, Inc.

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ONE STOP FINANCIAL, INC.

Business Benefits

55 MAIN ST., LITTLE FALLS, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

November 19, 1993

Greg Brown
District Manager
Room 2B10 Second Floor
5000 Hadley Road
South Plainfield, NJ 07080

Re: Continued Discrimination
AT&T refuses to offer One Stop an Equitable Discount Plan

Dear Greg:

My original request for a better discount plan goes all the way back to February 1993. Since then I have witnessed Private Discount Plans issued to aggregators with much less volume than I have. These plans have none of the caveats that AT&T wished me to enter into. There are no winback requirements, or minimum accounts per plan requirements, etc.

I site two examples of companies that have been given significant additional discount plans by AT&T, namely The First Group and First Comm. As you are well aware, The First Group never owned any 800 plan and they were given an additional 11.3% in discounts, on AT&T traffic and 22% on new business from AT&T competition. First Comm. was given discounts of approximately 37%, which is about 8% higher than our discount plan. First Comm's commitment to AT&T is far below my commitments to AT&T.

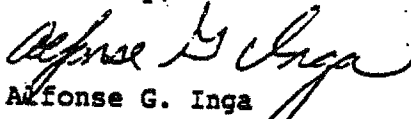
You and Rich Higginson were at my office several weeks ago promising that you would put something together for us within a week. It is now 3 weeks over due and based upon what I hear from my account manager, Joe Fitzpatrick, my proposal is not a priority. You are costing my company, based upon what has been issued by AT&T, a minimum of 8% return on 4 million per month of billing.

I have been told by Joe Fitzpatrick that the discount plan that was given to First Comm. could not be given to me. According to the FCC, any discount plan that I qualify for is available to me, so why am I being told differently by AT&T?

What you are doing to me and my company is discriminatory, prejudicial, and in clear violation of anti-trust laws. AT&T has singled my company out because of the amount of business we do, and is obviously determined to put us out of business.

I would like to hear from you ASAP in reference to my discount plan.

Sincerely,



Alfonse G. Inga

cc: Judge Curtis Meanor
cc: Charles Helein esq
cc: Greg Vogt FCC

WINBACK & CONSERVE PROGRAM

55 Main Street
Little Falls, NJ 07424
Voice Line 1-800-4LD-RATE
Voice Line 800-453-7283
Fax 800-338-0409

January 4, 1993

Richard Kurth
National 800 Product Manager

Via Fax: 908-234-3729

Re: AT&T's continued discrimination, and anti-trust practices
against Alfonse G. Inga.

Dear Rich:

I have been dealing with Greg Brown, Rich Higginson, Joseph Fitzpatrick, and yourself since March of 1993 asking for an equitable contract tariff (i.e. discount plan).

As you are aware, AT&T has provided contract tariffs to its direct and aggregator customers in which the compensation paid by AT&T to them is far in excess of the compensation paid my companies, and despite the fact that my companies account for far greater traffic volumes than these other AT&T customers.

Examples include:

Contract Tariff #435 in which AT&T gives the customer an additional 9.45% in discounts for only a \$3,600,000 per year commitment.

Contract Tariff #712 in which AT&T gives the customer an additional 17.58% in discounts for only a \$3,300,000 per year commitment.

Contract Tariff #786 in which AT&T gives the customer up to 28% additional percent discount for only a \$6,000,000 per year commitment.

Contract Tariff #374 in which AT&T gives The Furst Group, an AT&T aggregator up to an additional 22% for only a \$12,000,000 per year 1-800 commitment.

Tariff #15 was given to another aggregator called First Comm, who was given an additional 15% in discounts for only a \$10,000,000 per year commitment.

DATE IN ERROR
WINBACK didn't even
start until MAY '93.
Should be '94

Although my companies account for over \$40,000,000 in AT&T 800 service revenues per year, and I have continuously sought to obtain a comparable offer of a contract tariff since March of last year, AT&T has steadfastly refused to offer anything approaching the additional discounts it routinely provides to less productive customers.

What is more disturbing, is that AT&T has provided competitors of my companies, such as The Furst Group and First Com, with contract tariffs which have far more favorable terms on compensation without nearly the traffic volumes. Indeed, in at least the case of The Furst Group, it was solely an outbound service provider without sufficient 800 traffic to even qualify for a term plan and did not receive its term plan before August of last year.

There's no justifiable rationale which can explain this discriminatory treatment. Indeed, AT&T knows this. Every AT&T offer made to my companies has been so inferior to those offered to my competitors and other AT&T customers, that you have refused to put AT&T's offers to my companies in writing.

Without question, the practiced discrimination has resulted in hundreds of thousands of dollars in lost revenues per month. Moreover, and all the more pernicious because it is being done by explicit design, AT&T's practiced discrimination of compensating my competitors more favorably has caused my companies to lose agents to those competitors. As independent contractors these agents are being siphoned off by the unmerited additional compensation AT&T has provided to my competitors so that it can be used to pay them larger commissions. It is obvious that this part of AT&T's plan is to interdict my success by destroying my sales channels.

AT&T's true intentions to stifle the success of my operations is further demonstrated by its refusal to consider written proposals which I have submitted which are still less favorable than those AT&T is currently giving my competitors. Nevertheless, I have attached yet a further proposal for a contract tariff which, while still less favorable than those AT&T is providing to others, will, if accepted, at least lessen the degree of discrimination being practiced by AT&T.

I hold out little hope that AT&T will change its practices, but am making one last effort to rid our relationship of the undue and unlawful discrimination that exists. The realities of the marketplace ought to make AT&T's management recognize that my proposal is fair and generous and hence readily acceptable. I await your earliest reply.

Sincerely,

Afonse G. Inga President
Afonse G. Inga

cc: Judge Curtis Meanor, esq.
cc: Charles Helein, esq.
cc: Robert Podvey, esq.
cc: R.L. Smith FCC
cc: Greg Brown, AT&T

cc: Greg Vogt FCC
cc: Kathleen Levitz FCC
cc: Joseph Fitzpatrick,
AT&T
cc: Edward Barillari, esq.
AT&T

CONTRACT TARIFF PROPOSAL

- 1: \$40,000,000 per year obligation, with restructuring capabilities when under \$33,000,000 per year commitment.
- 2: Covers Switched Access (Including Masterline) for additional discounts.
- 3: MegaCom receives current CSTP/RVPP discounts only, no extra discounts.
- 4: Must enter Contract Tariff with a minimum of 12,500 BTN's.
- 5: Extra discount, 7% on both Intra and Interstate usage on existing AT&T base plus any new AT&T business.
- 6: New non-AT&T business 12% extra on both Intra and Interstate usage.
- 7: 2 Months free for Winbacks; 4th and 12th months.
- 8: Eligible for only one Promotional Bonus per calendar year.
- 9: Eligible for Partners in Business points.
- 10: Eligible to enroll CSTP II plans in the first month of the Contract Tariff only. CSTP II plan holders would get and keep any promotional monies already earned or to receive. In the case where promo monies have not as yet been received by an acquired CSTP II, the promo monies would be paid to me when the acquired CSTP II was to receive promo monies, including my own plans.
- 11: Extra One Point in compensation on AT&T base beyond the 7%, for each 1 million per month in Winbacks. Cap at 8% extra.
- 12: Enhanced Billing Options stay the same.
- 13: Serviced out of Minneapolis, Minnesota Front End Center.

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OSF



ONE STOP FINANCIAL, INC.

Business Benefits

55 MAIN ST., LITTLE FALLS, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

February 15, 1994

AT&T

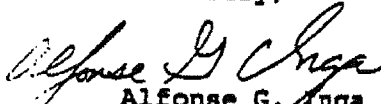
Attn: Joseph Fitzpatrick
5000 Hadley Road
South Plainfield, NJ

Via: Fax 908-668-6779

Dear Joe:

One Stop Financial, Inc. is very interested in obtaining a contract tariff in the range of \$36,000,000 per year 800 commitment. We anticipate that the back end promotion will be paid from our existing CSTP II's. We may also have additional concerns after the proposal is presented in writing to us. This is an agreement in principal only and we reserve the right to cancel if our concerns are not met.

Sincerely,


Alfonse G. Inga
President

AA472

WINBACK & CONSERVE PROGRAM

55 Main Street
Little Falls, NJ 07424
Voice Line 1-800-4LD-RATE
Voice Line 800-453-7283
Fax 800-338-0409

March 7, 1994

Mr. Richard Kurth
800 Product Manager
AT&T
Via Fax: 908-234-3729

Dear Rich:

It was not only but just a few weeks ago that you along with Joseph Fitzpatrick under oath claimed that the "Industry Wide Contract Tariff" would be the only contract tariff offered any aggregator.

According to Joseph Fitzpatrick this in fact is still AT&T's stance as of Friday, March 4th, 1994, "As it relates to me anyway." I now see that contract tariff number 969 has been filed with the Federal Communications Commission on behalf of MidCom, another aggregator and of course, my competitor.

I also see that you are offering MidCom a 54% discount on 1-800 billing for the same usage that I have. I of course am only receiving a 28% discount from AT&T. I therefore am losing 26% of 4 million per month compared to MidCom. I am being damaged by over 1 million per month because of AT&T's continued discrimination.

Mr. Fitzpatrick's ^{AGREEMENT} ~~agreement~~ was that this contract tariff (969) had been in the works for some time, and that was the sole reason why it was being filed at this point. If this is truly the reason why it is being filed, then I of course fit the same "exception to the rule," since under oath, during the depositions, you stated that you and your people were seriously and actively negotiating with me regarding my pleading for an equitable contract tariff.

This past Friday I got a call from Rob Hale of Network Plus who is, as you are aware, another competitor of mine. Now, I understand that you invited Mr. Hale to fly in from Massachusetts to go out to dinner and attend the N.Y. Rangers hockey game at Madison Square Garden, so as to discuss a contract tariff with Mr. Hale.

Before Rob flew to New York on Friday I spoke with him about MidCom's new contract tariff number (969). He stated that you were going to discuss his contract tariff and he would of course also bring up MidCom's new filing as a point of comparison.

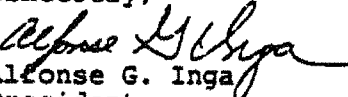
The FCC and the Federal District Court will obviously see that AT&T again has targeted me and is doing all it can to contribute to my business demise.

AT&T is well aware that the CSTEP II plan that I currently have is no longer competitive. Mr. Fitzpatrick has already stated that, "Any aggregator who is still selling CSTEP in a year from now will be out of business!" You are doing all you can to make Mr. Fitzpatrick's prophecy a reality.

I continue to have one of the highest retention rates of accounts remaining on AT&T's network, along with the most new accounts, brought in from competition to AT&T than every other aggregator in the country.

I can continue to be a major asset to AT&T if you would give me an equitable contract tariff.

Sincerely,


Alfonse G. Inga
President

cc: Curtis Meanor esq.
cc: Charles Helein esq.
cc: Richard Waysdorf esq.
cc: Michael Mandigo esq.
cc: Lawrence Coven esq.
cc: Kathleen Levitz (FCC)
cc: R.L. Smith (FCC)
cc: Greg Vogt (FCC)

cc: Greg Brown AT&T
cc: Rick Rossitt AT&T
cc: Joe Fitzpatrick AT&T
cc: Ed Barillari esq. AT&T
cc: Merric Bloch esq. AT&T
cc: Rob Hale Network Plus

WINBACK & CONSERVE PROGRAM

55 Main Street
Little Falls, NJ 07424
Voice Line 1-800-4LD-RATE
Voice Line 800-453-7283
Fax 800-338-0409

January 9, 1995

AT&T
Tom Umholtz
5000 Hadley Road
South Plainfield, NJ 07080

Re: AT&T has maximum penalty assessed against them for failure to allow aggregators access to Contract Tariffs.

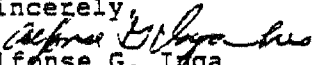
Dear Tom:

I now see based upon the enclosed article that the Federal Communications Commission has now started to catch on to the games that AT&T is playing to prevent aggregation. As you are aware I have been stating that AT&T has refused to offer me an equitable contract tariff since May of 1993. This FCC article further substantiates my contentions.

I continue to plead for an equitable contract tariff. Hopefully this article will wake you up and give you the initiative to offer me a contract tariff. With the evidence continuing to mount against AT&T I cannot understand how AT&T can continue to refuse to offer me an equitable contract as many other aggregators have already received. The fact that a federal jury will be seeing this year that AT&T has done everything in its power to put us out of business, would make you think that AT&T would finally wise up.

Before our court date you now have the opportunity to lessen the tremendous damages that have been inflicted against me. The ball is in your court, let's see if you are going to continue your oppressive behavior or show some semblance of proper behavior to the future jurors by offering me an equitable contract tariff.

Sincerely,


Alfonse G. Inga

c: Charles Helein esq.
c: Curtis Meanor esq.
c: Greg Brown
c: Edward Barillari esq.

c: Merric Bloch esq.
c: Maria Nascimiento
c: Joseph Fitzpatrick
c: Richard Higginson



NEWS

Federal Communications Commission
1919 - M Street, N.W.
Washington, D. C. 20554

News media information 202 / 418-0500
Recorded listing of release and texts
202 / 418-2222

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 585 (D.C. Cir. 1974).

Report No. CC 95-2

COMMON CARRIER ACTION

January 4, 1995

FCC PROPOSES \$1 MILLION FORFEITURE AGAINST AT&T FOR FAILING TO PROVIDE SERVICE TO RESELLERS

The Commission has notified AT&T of its apparent liability for forfeiture in the amount of \$1,000,000 for violating the Communications Act by failing to provide service to three reseller customers who requested service under an AT&T contract tariff. The Commission additionally has directed AT&T to show cause why it should not be required to furnish the service requested to GE Communications Systems, Inc. and Public Service Enterprises, Inc. within 30 days of the release of the Commission's Order. The third reseller customer has informed the Commission that it no longer wishes to obtain service under that contract tariff.

The Communications Act requires common carriers to furnish interstate communication service upon reasonable request. The Commission found that, although three resellers ordered service under AT&T's Contract Tariff Number 383 in August and September of 1993, AT&T has not yet delivered service to the two reseller customers who still wish to receive service, nor has it provided a satisfactory reason for its delay in providing the service. The third reseller customer never received service under the contract tariff, and withdrew its request in late June 1994.

The Commission has admonished carriers in the past to make all efforts to provide a requested service, and states further in the Order that "[t]his admonition is particularly relevant when an important Commission policy, such as our resale requirements, is thwarted by a carrier's refusal to provide service." The Commission has previously stated that unrestricted resale of communications services provides a valuable stimulus to competition, by creating incentives for carriers to offer services at prices that more closely reflect the underlying cost of providing the service. The unrestricted resale policy also reduces the likelihood of undue discrimination in the marketplace.

The Commission stated that AT&T is apparently liable for a forfeiture of the statutory maximum of \$1,000,000 because of the apparently intentional and continuing nature of the apparent violation of the Communications Act. Pursuant to Commission rules, AT&T must either pay the proposed forfeiture within thirty days, or file a response showing why the proposed forfeiture should not be paid or should be reduced.

(over)

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Action by the Commission, December 30, 1994, by Notice of Apparent Liability for Forfeiture and Order to Show Cause (FCC 94-359). Chairman Hundt, Commissioners Barrett, Ness and Chong, with Commissioner Quello concurring in part and dissenting in part.

-FCC-

News Media contact: Susan Lewis Saller and Audrey Spivack at (202) 418-0500.
Common Carrier Bureau contacts: Donna Lampert at (202) 418-1500 and Debra Sabourin at (202) 418-1530.

008

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
AT&T Communications)
)
Apparent Liability for Forfeiture)
and Order to Show Cause)

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE
AND ORDER TO SHOW CAUSE**

Adopted: December 30, 1994 ; Released: January 4, 1995

By the Commission: Commissioner Quello concurring in part and dissenting in part.

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture (NAL), we initiate enforcement action against AT&T Communications (AT&T). For the reasons we discuss below, we find that AT&T apparently violated Section 201(a) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 201(a), by failing to provide communications service under Contract Tariff F.C.C. No. 383 after receiving orders for this service from Tel-Save, Inc. (Tel-Save), Public Service Enterprises, Inc. (PSE), and GE Communications Systems, Inc. (GECCS). Based on our review of the facts and circumstances surrounding this violation, we find that AT&T is apparently liable for a forfeiture in the amount of \$1,000,000. We also order AT&T to show cause why it should not be ordered to provide service to these parties under Contract Tariff No. 383.

2. Section 201(a) of the Act requires common carriers to furnish communication service upon reasonable request.¹ As an interstate common carrier, AT&T is bound by these and other provisions in Title II of the Act. PSE, Tel-Save and GECCS resell interstate telecommunication services provided to them by AT&T and thus are also

¹ Section 201(a) of the Act, 47 U.S.C. § 201(a). Section 201(a) of the Act states that "[i]t shall be the duty of every common carrier engaged in interstate . . . communication by wire or radio to furnish such communications service upon reasonable request therefore"

common carriers.² The Commission has a long-standing requirement that all common carriers must permit unlimited resale of their services. The Commission has found that unlimited resale promotes the public interest by creating competitive pressures on carriers to provide service at rates near the cost of service and by stimulating demand for such service.³ Because of these benefits from resale of communications services, the Commission has rejected restrictions on resale as unjust and unreasonable under Section 201(b), and has concluded that resale and sharing serves as a vehicle for efficient enforcement of Section 202(a) of the Act.⁴

3. In the Interexchange Competition Order,⁵ the Commission permitted AT&T to offer contract-based rates, concluding that such offerings were consistent with Sections 202 and 203 of the Act. The Commission determined that contract tariffs are presumed lawful and are accorded streamlined review, taking effect after 14 days' notice. In considering the potential adverse effects of contract carriage on resellers, the Commission concluded that it was "not reasonable to assume that AT&T will refuse to present them [resellers] with viable service options at reasonable rates. In any event, . . . , the terms of AT&T's contracts must be filed with the Commission and made available to all similarly situated customers, including resellers."⁶ In this order, we address a situation in which AT&T has apparently refused to provide service under a contract tariff despite requests for this service from the resellers named above, in violation of Section 201(a) of the Act.

² See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C. 2d 261 (1976) (Resale and Shared Use Order) amended on recon., 62 F.C.C. 2d 588 (1977) aff'd sub nom. American Telephone and Telegraph Co. v. FCC, 572 F.2d 17 (2d Cir.), cert. den. 99 S.Ct. 213 (1978). Resale is "an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications service and facilities to the public (with or without 'adding value') for profit." *Id.* at 271. The resale of communications service is a common carrier activity and entities engaging in resale are fully subject to the provisions of Title II of the Communications Act. *Id.* at 321.

³ *Id.* at 283, 298-99.

⁴ *Id.* at 283.

⁵ Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, 6 FCC Rcd 5880 (Interexchange Competition Order), reconsidered in part, 6 FCC Rcd 7569 (1991), further recon., 7 FCC Rcd 2677 (1992).

⁶ *Id.* at 5901.

II. BACKGROUND

4. On August 9, 1993, AT&T filed Contract Tariff No. 383 with the Common Carrier Bureau. The tariff took effect on August 23, 1993. Tel-Save and PSE requested service under the contract tariff on August 24 and September 14, respectively. GECCS requested service not long thereafter.⁷ These three customers thus sought service under Contract Tariff 383 as originally filed, with the same terms and conditions that were in effect when they first requested the service. No service under Contract Tariff 383 has been delivered to these resellers from the time that this contract tariff was introduced.

5. On September 9, 1993, after receiving the order for service from Tel-Save, AT&T filed a tariff transmittal that would have changed material terms and conditions of Contract Tariff 383.⁸ By this transmittal, AT&T proposed to amend the application of certain usage credits provided under Contract Tariff 383. As originally filed, Sections 6.B.3 and 6.B.4 of Contract Tariff 383 stated:

3. AT&T will apply a quarterly usage credit, in an amount equal to 10% of the total of the qualifying usage charges in the previous quarter . . . To be eligible to receive this credit, the Customer must have at least \$90,000 in . . . quarterly usage billing. The customer must satisfy all monitoring conditions . . . or will be liable for repayment of this credit.

4. AT&T will apply a quarterly usage credit, in an amount equal to 15% of the total qualifying usage charges in the previous quarter . . . To be eligible to receive this credit, the Customer must have at least \$195,000 in . . . quarterly usage billing. The customer must satisfy all monitoring conditions specified . . . or will be liable for repayment of this credit.

Thus, under the plain language of the tariff as originally filed, a customer could qualify for both usage discounts. Even if the language were found to be ambiguous, however, it is well-established that such uncertainties in tariff provisions are interpreted in the customer's favor.⁹

⁷ See Letter from Robert Reiser, GECCS, to Richard Higginson, Eastern Region Manager, Specialized Markets Division, AT&T (dated September 17, 1993).

⁸ See AT&T Contract Tariff Transmittal No. 632, filed September 9, 1993.

⁹ American Satellite Corporation v. MCI Telecommunications Corporation, 57 F.C.C. 2d 1165, 1167 (1976), citing United States v. Gulf Refining Co., 268 U.S. 542, 45 S.Ct. 597, 69 L.Ed. 1082 (1925) ("It is well settled that where there is an ambiguity, uncertainty, or reasonable doubt as to which of two constructions should prevail in a tariff schedule, the ambiguity should

AT&T proposed in the September 9 tariff transmittal to amend Sections 6.B.3 and 6.B.4 to state:

3. AT&T will apply a quarterly usage credit, in an amount equal to 10% of the total of the qualifying usage charges in the previous quarter . . . To be eligible to receive this credit, the Customer must have at least \$90,000 in . . . quarterly usage billing. This credit cannot be combined with the credit in 6.B.4. following. The customer must satisfy all monitoring conditions . . . or will be liable for repayment of this credit.

4. AT&T will apply a quarterly usage credit, in an amount equal to 15% of the total qualifying usage charges in the previous quarter . . . To be eligible to receive this credit, the Customer must have at least \$195,000 in . . . quarterly usage billing. This credit cannot be combined with the credit in 6.B.3. preceding. The customer must satisfy all monitoring conditions specified . . . or will be liable for repayment of this credit.

(emphasis added).

6. On September 13, 1993, prior to the date on which the proposed changes to Contract Tariff 383 would have taken effect,¹⁰ AT&T sent a letter to Tel-Save accepting its request for Contract Tariff 383. In its letter, AT&T also notified Tel-Save of the pending "clarifications" that were on file with the Commission. Finally, AT&T attached a Contract Tariff Order Form, which it claimed was "necessary to execute the agreement" between AT&T and Tel-Save.¹¹ This document, however, had previously been completed

be resolved against the maker of the tariff and in favor of the customer."); see also 13 C.J.S. Carriers § 303, p. 706 13 Am. Jur., Carriers §116, p. 655 (Carriers establishing tariff schedules for interstate commerce are not entitled to have those schedules liberally construed in their own favor.)

¹⁰ The revisions in Contract Tariff Transmittal 632 were filed to take effect on September 23, 1993 on 14 days notice.

¹¹ See Letter from Richard Higginson, Eastern Region Manager, Specialized Markets Division, AT&T, to Daniel Borislow, President, Tel-Save (dated September 13, 1993). A copy of AT&T's letter accepting Tel-Save's request for service under Contract Tariff 383 is attached to the Tel-Save petition to reject, or to suspend and investigate, AT&T Contract Tariff Transmittal No. 632, which was filed with the Commission on September 15, 1993. AT&T similarly acknowledged GECCS' request for service by letter on September 13, 1993, and PSE's request for service by letter on September 29, 1993.

and forwarded to AT&T by Tel-Save as part of its initial request on August 24.¹²

7. On September 15, 1993, Tel-Save and GECCS filed petitions to reject or suspend and investigate the amendments contained in the September 9 tariff transmittal. On the same date, PSE filed a petition to reject the transmittal. The parties claimed AT&T was attempting to alter material terms of Contract Tariff 383 by means of the proposed amendments. They also claimed that their orders for Contract Tariff 383 had been received by AT&T prior to the proposed effective date of those contract amendments. Thus, these petitioners argued, AT&T should have sought their approval of any changes to the contract terms rather than attempting to change unilaterally the terms of the contract tariff. At the direction of the Common Carrier Bureau, the effective date of the revisions to Contract Tariff 383 contained in the tariff transmittal was deferred until December 8, 1993 in order to evaluate the issues raised by petitioners.

8. On November 16, 1993, AT&T filed an amendment to the tariff to "grandfather" parties ordering service under Contract Tariff 383. This amendment provided that "customers who have ordered this Contract Tariff [Contract Tariff 383] by November 16, 1993" were not subject to the amendments contained in the September 9 transmittal, but were still bound by the terms of the contract service offering as filed on August 9, 1993. Thus, the new tariff amendment allowed the petitioners to take service under Contract Tariff 383 pursuant to the terms and conditions that were in effect when AT&T accepted their requests for service. GECCS, PSE and Tel-Save withdrew their petitions against the tariff transmittal in light of AT&T's amendment.¹³ Because of these developments, the Bureau granted AT&T's request to advance the effective date of the amendments to Contract Tariff 383 from December 8, 1993 to November 16, 1993.¹⁴

¹² See Letter from Daniel Borislav, President, Tel-Save to Richard Higginson, Eastern Region Manager, Specialized Markets Division, AT&T (dated August 24, 1993). With its letter, Tel-Save attached a completed AT&T Contract Tariff Order Form. In its letter, Tel-Save states that it filled out the order form for Contract Tariff 383 in exactly the same way as it previously had filled out the same form when it ordered service under AT&T's Contract Tariff 190.

¹³ See Letters to the Secretary, Federal Communications Commission (November 16, 1993.)

¹⁴ See AT&T Contract Tariff Transmittal No. 952, filed November 16, 1993, revising material in Contract Tariff 383 which was originally filed under Contract Tariff Transmittal 632. As discussed above at note 7, Contract Tariff Transmittal 632 proposed to amend language pertaining to certain usage credits. By Contract Tariff Transmittal 952, AT&T also sought to advance the effective date of the material filed in Contract Tariff Transmittal 632 from December 8, 1993 to November 16, 1993.

9. As of December 1, 1994, AT&T has not furnished communications service under Contract Tariff 383 to Tel-Save, PSE and GECCS despite AT&T's acknowledgement of their requests for service.¹⁵

III. DISCUSSION

10. We find that AT&T has apparently violated Section 201(a) of the Act by failing to furnish communications service pursuant to Contract Tariff 383 to Tel-Save, PSE and GECCS. Tel-Save, PSE and GECCS requested service under Contract Tariff 383. Nevertheless, no service has been provided to them under Contract Tariff 383, nor has AT&T provided to them a satisfactory reason for its delay in providing this service. Under the circumstances we have described here, AT&T's failure to provide the requested communications service constitutes an apparent breach of its common carrier obligation to provide a tariffed service upon reasonable request as set forth in Section 201(a) of the Act.

11. The Commission has routinely required common carriers to meet their Section 201(a) obligations to furnish communications service when so requested. In imposing a forfeiture for a violation of Section 201(a), the Commission has stated:

we expect that carriers who are requested to provide service should make all efforts to do so, such as providing them under protest pending the resolution of complaints, petitions, or litigation, rather than refusing to meet a questionable obligation until after the complaint or litigation is resolved. Those who choose the course of non-compliance are on notice that they will be acting at their own peril, should the question of the legitimacy of their refusal to meet the common carrier obligations be decided against them.¹⁶

¹⁵ Tel-Save terminated its request for Contract Tariff No. 383 in late June, 1994 as part of a larger settlement agreement with AT&T. This was more than ten months after it ordered service, and more than nine months after AT&T accepted Tel-Save's order. Like PSE and GECCS, Tel-Save never received service under Contract Tariff 383.

¹⁶ In the Matter of Hawaiian Telephone Company, 78 F.C.C. 2d 1062, 1065 (1980); see also Cable News Network, Inc., et.al., 78 F.C.C. 2d 1200A, 1204 (1980) (Carrier liable for forfeiture for failing to provide circuits pursuant to order of the Chief, Common Carrier Bureau in violation of Section 201(a): "...a carrier is obligated to take reasonable steps to meet a demand for service..."); Ward v. Northern Ohio Telephone Company, 300 F.2d 816 (6th Cir. 1962), cert. den. 371 U.S. 820 (1962) (Carrier liable for damages to radio station operator when it stopped providing telephone lines to carry radio broadcasts from the source of the broadcast

This admonition is particularly relevant when an important Commission policy (our resale requirements) is thwarted by a carrier's refusal to provide service.

12. We have concluded that AT&T's failure to provide service under Contract Tariff 383 to these resellers is an apparent violation of Section 201(a) of the Communications Act. AT&T's actions are of significant concern to us because they appear to be an intentional attempt to vitiate the goals of the Commission's resale policy. In the Resale and Shared Use Order, we determined that unlimited resale of communications services in a competitive environment is just and reasonable, and that tariff provisions preventing or restricting such practices are unjust and unreasonable and thus unlawful under Section 201(b) of the Communications Act. The Commission found that numerous public benefits would flow from unlimited resale and sharing activity, which in part "entails elimination of underlying carrier tariff restrictions on resale and sharing."¹⁷ Chief among the public benefits from unlimited resale is the incentive provided to carriers to offer services at rates that more closely reflect the underlying cost of providing the service. If a carrier's communications services and facilities can be resold, it is more likely to price them closer to costs.¹⁸ Further, because unrestricted resale and sharing of communications services will increase the number of parties offering the same types of services, undue discrimination in the marketplace is less likely to occur. Thus, the resale mechanism furthers the objectives of Sections 201(b) and 202(a) of the Act.¹⁹

13. Actions taken by a carrier that effectively obstruct the Commission's resale requirements are inherently suspect. AT&T's failure to provide service under Contract Tariff 383 to resellers in response to their orders, and its attempts to use the tariff process to alter material terms of the service to the detriment of resellers after AT&T had received service orders, leads us to conclude that AT&T has apparently sought to evade the Commission's resale policy. The three resellers identified above relied on the general availability of Contract Tariff 383 by ordering service within days of the tariff's effective date. After acknowledging the resellers' orders for service, however, AT&T attempted

to the transmitter).

¹⁷ Resale and Shared Use Order, 60 F.C.C. 2d at 298.

¹⁸ Resale and Shared Use Order, 60 F.C.C. 2d at 299. See also Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989) (AT&T Price Cap Order); modified on recon., 6 FCC Rcd 665 (1990); Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (LEC Price Cap Order), Erratum, 5 FCC Rcd 7664 (Com.Car.Bur. 1990), modified on recon., 6 FCC Rcd 2637 (1991) aff'd, National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

¹⁹ Resale and Shared Use Order, 60 F.C.C. 2d at 298-99.

to change the discounts that were available under the terms of the contract tariff. AT&T's actions in attempting to amend material terms of the contract tariff after Tel-Save's order had been submitted appear to support an inference that AT&T intentionally sought to prevent these resellers from obtaining the full benefits of the contract tariff that were originally offered. Additional evidence of such apparent intent can be found in AT&T's lengthy inaction in response to the parties' timely request for service. Further, despite its receipt of Tel-Save's request for service, AT&T's cover letter accompanying the proposed amendments stated only that the "existing Customer for the Contract Tariff is aware of and has agreed to this change." Although only one entity had been receiving service under Contract Tariff 383, more than one party had expressed interest in receiving service under the existing terms of the contract tariff when AT&T proposed to amend the tariff. By its letter, however, AT&T implied to the Bureau that the only party desiring service under Contract Tariff 383 had agreed to the amendments AT&T proposed.

14. Most importantly, however, AT&T still has not actually provided service to these resellers under Contract Tariff 383. The failure to provide service serves as the basis for our finding of an apparent violation of Section 201(a). The evidence of AT&T's apparent intent to evade the Commission's resale requirements further buttresses the essential finding of an apparent statutory violation warranting a proposed forfeiture.

15. Our authority to assess forfeitures for the apparent violations of Section 201 of the Act and related Commission rules, regulations, and orders is governed by Section 503 of the Act.²⁰ The forfeiture ceiling per day for a continuing violation set forth in Section 503 is \$100,000 for common carriers, with an overall limit of \$1,000,000 for continuing violations involving a single act or failure to act. We find that AT&T's failure to furnish communications service under Contract Tariff 383 to each of these resellers is a willful, continuing violation of Section 201(a) of the Act of a duration exceeding at least ten days, thus implicating the statutory maximum.²¹ Forfeiture amounts for violations of

²⁰ See Section 503(b)(1)(B) of the Communications Act, 47 U.S.C. § 503(b). Section 503(b) of the Communications Act states in pertinent part that "Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this sub-section, to have—

(B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter....shall be liable to the United States for a forfeiture penalty.

²¹ Section 312(f)(1) of the Communications Act provides:

The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or

Section 201(a) are not specified in the Act. Because of the apparently intentional nature of AT&T's violation and the fact that the violation was repeated with three separate entities and continued for some time, we believe a forfeiture of the statutory maximum amount of \$1,000,000 is warranted consistent with factors set forth in Section 503(b)(2)(D) of the Act.

16. We also order AT&T to show cause why it should not be required to bring itself into compliance with Section 201(a) by remedying its failure to provide service to PSE and GECCS.²²

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act, 47 C.F.R. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that AT&T Communications IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$1,000,000 for its continuing violation of Section 201(a) of the Communications Act, 47 U.S.C. § 201(a) by failing to furnish communication service upon the reasonable request of Tel-Save, Inc., Public Service Enterprises, Inc., and GE Communications Systems, Inc.

regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991)([W]illful means that the licensee knew he was doing the act in question, regardless of whether there was an intent to violate the law.)

Section 312(f)(2) of the Communications Act provides:

The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

²² Under the circumstances, we do not believe it is necessary to specify the exact date on which AT&T's failure to provide service under Contract Tariff 383 became a violation of Section 201(a). Given the long delay since AT&T received the Tel-Save, PSE and GECCS orders, we need only to conclude that AT&T's failure to provide service upon reasonable request became apparent, at the latest, by a date six months after the date of the first order filed by any one of the three resellers, that is, by February 24, 1994, the date Tel-Save placed its order for service under Contract Tariff 383.

18. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. § 1.80(f)(3), that AT&T Communications SHALL PAY within thirty (30) days of the release of this notice the full amount of the forfeiture ordered here in the manner provided for in Section 1.80(h) of the Rules²³ or SHALL FILE a response showing why a forfeiture should not be imposed or should be reduced.

19. IT IS FURTHER ORDERED that AT&T shall show cause why it should not be required to furnish service to Public Service Enterprises, Inc. and GE Communications Systems, Inc., under the terms and conditions of AT&T Contract Tariff F.C.C. No. 383 within thirty (30) days of the release of this Order.

20. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture and Order to Show Cause SHALL BE SENT by certified mail to AT&T's counsel, Francine J. Berry, Esq., AT&T Communications, Room 3244J1, 295 North Maple Avenue, Basking Ridge, NJ 07920.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

²³ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on AT&T Communications' check or money order to "NAL/Acct. No. 517TF0001." Remittances should be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL 60673-7482.